HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No. 18515 OF 2005

Between:

Andhra Pradesh State Road
Transport Corporation

… Petitioner

AND

Commissioner,
Municipal Corporation of Hyderabad,
& another.

… Respondents

Counsel for the petitioner : Sri V.S.K.Rama Rao
For Sri V.T.M.Prasad

Counsel for respondent No.1 : Shri Ghanta Rama Rao

Counsel for respondent No.2 : Sri Vilas Afzalpurkar

Dated: 6th November, 2006

: ORDER :

Per C.V.Nagarjuna Reddy, J

Andhra Pradesh State Road Corporation represented by its Managing Director has filed this Writ Petition questioning the action of the Municipal Corporation of Hyderabad in not taking steps for closing or shifting of burial ground and a Goshala run by the second respondent from the vicinity of Mahatma Gandhi Bus Station at Gowliguda, Hyderabad. The averments in the affidavit filed in support of the writ petition, briefly stated, are as under:

The petitioner Corporation constructed a big bus station called Mahatma Gandhi Bus Station at Imlibun. It is operating buses from the said Bus Station throughout the State and to the various places in the neighboring states, viz., Tamil Nadu, Karnataka, Maharashtra and Madhya Pradesh. While on an average one lakh passengers utilize the bus station everyday, about four thousand to five thousand employees are working in this bus station. There is a burial ground in the middle of the bus station and two to three bodies are burnt everyday, which is causing severe foul smell apart from nuisance and air pollution, affecting the staff and commuters at the bus station. The second respondent has unauthorisedly started using the burial ground as Goshala and providing shelter to more than one thousand cattle in

the premises, causing unhygienic condition. The Regional Manager of the petitioner Corporation sent a report dated 23.8.2002 to the head office of the petitioner Corporation, wherein the aforesaid problems created on account of using of an extent of Ac.2.17 cents as cremation ground and cattle shed were brought to the notice of the higher authorities. Consequently, a legal notice dated 25.11.2002 was issued to the second respondent to close the Goshala within ten days, but the second respondent refused to accept the same. On 10.2.2003, a representation was made on behalf of the petitioner to the Commissioner, Pollution Control Board in that regard. The officials of the said Board inspected the site and addressed letter dated 24.3.2003 to the Municipal Corporation of Hyderabad wherein it was mentioned that the subject matter does not fall within their jurisdiction and for taking appropriate action by the Municipal Corporation of Hyderabad. The Corporation has not taken any action though the petitioner made a number of representations. The second respondent has not taken any permission from the first respondent for converting a part of the burial ground into a Goshala as required under the provisions of the Hyderabad Municipal Corporation Act 1955. As the first respondent Corporation failed to take any action, the present writ petition is field for appropriate direction to close the grave hard and the Goshala.

Respondents 1 and 2 have filed separate counter affidavits. In the counter affidavit of the first respondent, it is averred that their enquiries revealed that the burial ground and Goshala are in existence for more than 200 years and second respondent is

maintaining Goshala with around 604 cattle in the same premises. The averment that two or three dead bodies are burnt everyday has been denied. It is stated that their verification revealed that only two to three cremations take place in a month and that there is a Goshala in between the burial ground and the bus station and that all the necessary precautions are taken by the second respondent to avoid any foul smell being emanated. It is also mentioned that Sri Jagannadhaswamy temple, burial ground and Goshala are in existence even before the land was allotted to the petitioner Corporation and that, as a matter of fact, a part of the land belonging to the Temple was taken over by the petitioner for being used for construction of the bus station and as per the terms of memorandum of understanding entered into between the petitioner and the owner of the land (second respondent), it was agreed that there shall be a compound wall around the cremation ground which itself shows that the petitioner agreed to continue the existing burial ground. It was further averred that a recent inspection made on 2.9.2006 by the Veterinary team of the Corporation revealed that sufficient precautions are taken by the second respondent in maintaining the Goshala by employing qualified Veterinarians and keeping the premises neat and clean and maintaining good hygienic conditions. As only pure ghee for burning the bodies is used, there is no chance of emission of smoke as alleged by the petitioner and that no nuisance is being caused on account of the existence of the burial ground and running of Goshala. It is also averred that as the petitioner has acquired Ac.1.03 cents of land belonging to Sri Jagannadha

Swwamy Temple, they agreed to pay Rs.15,00,000/- initially for renovation of the temple before finally paying the market price of the land, but only a sum of Rs.8.4 lakhs was deposited by the petitioner with the Endowments Departments. The first respondent has reiterated that the existence of burial ground and Goshala have in no manner been causing any nuisance or inconvenience to the passengers or the staff of the petitioner corporation.

The case set up by the second respondent is that it was registered as society under the Societies Registration Act 1357 Fasli with Registration No.31/1953. A copy of Muntaqhab issued by the Ecclesiastical Department of the H.E.H. The Nizam Government on 2nd Fervardi 1337 Fasli (1926-27 AD) has been filed along with a true English translation as Annexures-I and II and City Survey Map of 1913 AD has been filed as Annexure-III which show the existence of a Temple and the Masan and other structures such as Samadis and Chatris over an extent of 6 Bigas and 5 Bams (equivalent to 22,500 square yards). The temple is run under the control of the Endowments Department with the members of the second respondent visiting the temple and offering prayers. The second respondent has been managing the structures and Goshala which are in existence for centuries. When the petitioner Corporation attempted to take over a part of the property of the temple in the year 1986-87 in connection with the construction of the new bus stand, the trust which is managing the temple filed W.P.No.19343 of 1987 before this Court. The petitioner submitted to the Court that it will not utilize any part of the land belonging to the Temple without acquiring the same under

the provisions of the Land Acquisition Act and this Court, recording the said submission disposed of the said writ petition. Subsequently a meeting between the Endowments Department, representatives of the petitioner Corporation and second respondent was held on 28.12.1990. The decisions taken in the said meeting are reflected in the letter dated 20.2.1991 (Annexure-V) addressed by the Assistant Commissioner, Endowments Department to the second respondent. The petitioner failed to pay the compensation fixed for taking over the land belonging to the Temple, inasmuch as against the land value of Rs.1200 per square yard and a sum of Rs.15,00,000/- for renovation of the Temple as agreed to be paid by the petitioner Corporation, only a sum of Rs.8.47 lakhs was paid. According to the second respondent, the petitioner has filed the writ petition by suppressing all these facts. The second respondent has also denied the allegation that there are unhygienic conditions in the cremation ground and Goshala. The second respondent has relied on report dated 13-7-2005 of the Chief Veterinary Officer of the first respondent, which was sent to the P.S. to Special Secretary to Chief Minister, Government of Andhra Pradesh.

We have heard Sri V.S.K.Rama Rao, learned counsel appearing for Sri V.T.M.Prasad, learned Standing Counsel for the petitioner Corporation, Sri Ghanta Rama Rao, for respondent No.1 and Sri Vilas Afzalpurkar, learned Senior Counsel for respondent No.2.

This case reminds us of the story of the camel and the Arab. The petitioner which entered the vicinity where a grave yard

with structures such as Temple and tombs are evidently in existence for at least 100 years is seeking ouster of the people who are benefiting from availing the amenities being made available to them by the second respondent as a philanthropic measure. In their affidavits, both the respondents have made averments, which have not been controverted by the petitioner that no nuisance is being caused due to the cremation ground, which is in existence for the last more than 100 years and the Goshala, which is being run in a clean and hygienic condition. The documents produced by the second respondent amply support this assertion. What is more, letter dated 20.2.1991 addressed by the Assistant Commissioner, Endowments Department, Hyderabad to the representative of the second respondent clearly speaks of the understanding, the petitioner reached with the second respondent at the time when the petitioner sought to establish the bus station by taking over Ac.1.03 guntas, in addition to about Ac.14.00 allotted by the Government adjacent to the property belonging to the second respondent. In this letter, the genuineness of which is not denied by the petitioner, it is clearly brought out by the Assistant Commissioner of Endowments that in a tripartite meeting held on 28.12.1990 between the petitioner, the Endowments Department and the representatives of the second respondent, the petitioner and the second respondent agreed for the following conditions:

> "1.A line may be drawn leaving a bath room and bore well to grave yard.
> 2. Boundary wall should be constructed with 10' height of R.R. Masonry with a gate of 20' wide.
> 3. Rear side open samadhis land will be enclosed by a

10' compound wall all sides i.e., Eastern and Northern sides.

4. Temporary wall of western side will be dismantled for construction of footing of pillars. Pillars will be outside of the walls. The walls will be constructed at same place without any encroachment on graveyard side.
5. Near Bore-well, one gate 10' height will be constructed.
6. Wall will be of 10' height of stone masonry and if remaining walls are of less, height should be raised upto 10' height by RTC."

Apart from the aforementioned understanding, letter dated 16.10.1995 sent by the Commissioner, Endowments Department to the Principal Secretary to the Government (Endowments-II) Department on 16.10.1995 shows that the petitioner agreed to pay compensation for the land admeasuring Ac.1.03 guntas belonging to Sri Jagannadha Swamy Temple but the rate of compensation was not fixed so far and that out of Rs.15,00,000/- which the petitioner promised to pay for reconstruction of temple it has deposited only a sum of Rs.8.47 laks. It is interesting to note from this letter that the petitioner itself agreed to construct a burning Ghat with compound wall to be constructed around the samadhis.

The aforementioned material on record clearly discloses that the petitioner has approached this Court by suppressing vital and material fats. It has failed to mention that it has acquired Ac.1.03 guntas of land belonging to the Temple, which is located on the land forming part of the premises under the management and control of the second respondent and that the petitioner was very much aware of the use of the neighboring land belonging to the second respondent as burial/cremation ground. The letter

dated 20.2.1991 addressed by the Assistant Commissioner clearly reveals that the petitioner, conscious of the existence of the burial/cremation ground agreed to take various measures including raising of R.R. Masonry wall with a height of 10 feet and for erection of a 20 feet wide gate enclosing the grave yard. Letter sent by the Commissioner of Endowments to the Principal Secretary to the Government clearly reveals that the petitioner had agreed to construct a burning ghat and erect a compound wall around the Samadhis. It is most unfortunate that being an instrumentality of the State the petitioner suppressed these material facts and presented a picture in the writ petition as if the second respondent has been causing nuisance by unauthorisedly using the land for cremation purpose and running a Goshala. Such a conduct on the part of the petitioner is least expected and this itself disentitles the petitioner to any relief. While we do not propose to question the wisdom of the authorities in deciding to locate a huge bus station by the side of an existing cremation ground, having chosen to locate and run a bus station at such a place, it lies ill in the mouth of the petitioner to complain about the activities carried out by the 2nd respondent over a long period of time. Even the material which is referred to above produced by the second respondent and the counter affidavit filed by the first respondent clearly reveal that the petitioner's version of alleged nuisance is totally false. We are satisfied that the second respondent is maintaining both the cremation ground and the Goshala in hygienic conditions, without causing any nuisance to the public, including the passengers using the bus station and the

staff of the petitioner Corporation working in the bus station and that the petitioner has absolutely no legal right whatsoever to seek the relief of preventing the second respondent from carrying on the aforementioned two activities complained of in the adjacent land.

In the result, the writ petition is dismissed. We would have saddled the petitioner with exemplary costs for approaching this Court with unclean hands, but refrain from doing so for the only reason that the petitioner is a public utility undertaking and payment of costs would only burden the public exchequer.

C.V.NNAGARJUNA REDDY, J

6th November, 2006

G.S.SINGHVI, CJ

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